

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
BILLINGS DIVISION

**FILED**

JUN 15 2015

Clerk, U.S. District Court  
District Of Montana  
Billings

ROBERT SHIPLEY,

Plaintiff,

vs.

AL HOMME,

Defendant.

CV 15-36-BLG-SPW

ORDER

Plaintiff Robert Shipley brought this action against Al Homme, a city judge in Miles City, Montana. Shipley alleges that Judge Homme illegally “reneged” on his recusal from a misdemeanor criminal case. Shipley also claims that Judge Homme illegally refused Shipley’s attempts to pay \$510 in cash as bail while Shipley was in jail pending misdemeanor charges. United States Magistrate Judge Carolyn Ostby issued Findings and Recommendations on May 22, 2015. Judge Ostby concluded that Judge Homme is protected by judicial immunity and recommends that this Court dismiss Shipley’s Complaint. Shipley timely objected. Therefore, this Court must review de novo the portions of the Findings and Recommendations to which Shipley objects. 28 U.S.C. § 636(b)(1)(B).

Shipley argues that Judge Homme is not entitled to judicial immunity. Judicial officers cannot be held liable in civil actions, “even when such acts are in

excess of their jurisdiction, and are alleged to have been done maliciously or corruptly.” *Stump v. Sparkman*, 435 U.S. 349, 356 (1978) (quoting *Bradley v. Fisher*, 80 U.S. 335, 351 (1871)). Judicial immunity has only two recognized exceptions: (1) actions not taken in a judicial capacity, and (2) actions taken in the complete absence of all jurisdiction. *Mireles v. Waco*, 502 U.S. 9, 11 (1991).

Taking Shipley’s allegations as true, the Court finds that neither of the exceptions to judicial immunity applies. Judge Homme’s decision to preside over a case in which he previously recused himself was taken in a judicial capacity. Further, Shipley does not contest the Judge Homme has jurisdiction over such misdemeanor cases. As to the second allegation, Judge Homme’s refusal to accept Shipley’s cash as bail was also made in a judicial capacity, as he was presiding over Shipley’s case. Judge Homme also had jurisdiction to make bail decisions on misdemeanor cases.

After a de novo review, the Court finds that Judge Ostby did not err in the Findings and Recommendations. Accordingly, IT IS HEREBY ORDERED:

1. Judge Ostby’s Findings and Recommendations (Doc. 7) are ADOPTED IN FULL.

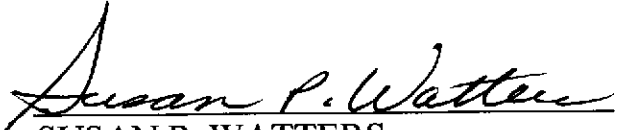
2. Shipley’s Motion for Leave to Proceed in forma pauperis (Doc. 1) is DENIED.

3. Shipley’s Complaint (Doc. 2) is DISMISSED.

4. Shipley's Motion for Protective Order (Doc. 3) is DENIED.

5. The Clerk of Court shall close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

DATED this 15<sup>th</sup> day of June, 2015.

  
SUSAN P. WATTERS  
United States District Judge